

UNITED STATES DISTRICT COURT  
DISTRICT OF RHODE ISLAND

JOE KLUNDER

v.

BROWN UNIVERSITY,  
et al.

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C.A. No. 10-410ML

**MEMORANDUM AND ORDER**

Pending before me for determination (28 U.S.C. § 636(b)(1)(A)) is Defendants' Motion for Discovery Sanctions. (Document No. 52). Plaintiff objects. (Document No. 56). A hearing was held on March 12, 2013. Defendants' Motion is resolved as follows:

1. Defendants' request for dismissal is rejected. Defendants have not shown circumstances warranting the harsh sanction of dismissal. See Esposito v. Home Depot U.S.A., Inc., 590 F.3d 72, 79 (1<sup>st</sup> Cir. 2009) (noting that the justification for dismissal as a discovery sanction "must be comparatively more robust").

2. Plaintiff has waived any objections to the discovery requests by failing to respond in a timely fashion. See Fed. R. Civ. P. 33(b)(4) and 34(b)(2); Local Rule Cv 33(c) and 34(c). Plaintiff was served with discovery in April 2012, and Defendants ultimately moved to compel on September 29, 2012 due to Plaintiff's failure to respond. See Document Nos. 43 and 44. On October 18, 2012, the Motions to Compel were granted, absent any opposition filed by Plaintiff, and he was ordered to respond within twenty-one days, i.e., by November 8, 2012. Subsequent to November 8, 2012, Plaintiff served the untimely responses currently in dispute.

3. As to Defendants' Interrogatories 6, 8, 9, 13, 14, 16, 19 and 21, Plaintiff shall, within twenty-one days, serve supplemental answers on Defendants which more fully respond to the

Interrogatories to the best of Plaintiff's ability after a good faith review of information within his knowledge, possession or reasonably available to him.

4. As to Defendants' Requests for Production of Documents, Plaintiff shall, within twenty-one days, serve a formal response on Defendants which specifies which of the previously produced documents respond to each particular document request. Plaintiff shall also supplement his responses with any additional responsive documents within his possession, custody or control. This includes documents which Plaintiff may have received from Defendants either prior to or during the course of this litigation so that Defendants have notice as to which documents Plaintiff intends to rely upon to support his claims, e.g., Request Nos. 2, 4, 5, 6 and 12.

5. As to Defendants' request for a Rule 26 expert disclosure, that issue is moot in view of Plaintiff's attorney's representation that Plaintiff will not be calling an expert witness.

6. As to Defendants' request to reconvene Plaintiff's deposition, that issue is also moot in view of Plaintiff's attorney's representation that Plaintiff does "not object to an additional limited deposition of [him] not to exceed four hours to be scheduled at a mutually convenient time." (Document No. 56 at p. 7).

7. Finally, as to Defendants' request to preclude any nondisclosed witnesses or evidence, that request is granted. Plaintiff is precluded from presenting any witnesses or evidence in support of his claims that have not been disclosed or reasonably referenced in his original or supplemental responses to Defendants' Interrogatories, Requests for Production of Documents or questioning at his deposition(s).

### **Conclusion**

Defendants' Motion for Discovery Sanctions (Document No. 52) is GRANTED in limited

part as specified herein.

SO ORDERED

/s/ Lincoln D. Almond  
LINCOLN D. ALMOND  
United States Magistrate Judge  
March 19, 2013